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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/031,592

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Ivailo E. Stanimirov

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6275

7590

02/24/2006

Edward A Meilman
Dickstein Shapiro Morin & Oshinsky
2101 L Street NW
Washington, DC 20037-1526

EXAMINER

FERGUSON, MARISSA L

ART UNIT

PAPER NUMBER

2854

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/031,592

Applicant(s)

STANIMIROV ET AL.

Examiner

Marissa L. Ferguson-Samreth

Art Unit

2854

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-8, 10 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-8 is/are allowed.
- 6) ☒ Claim(s) 10 and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sayre (US Patent 5,654,022) in view of Lauer et al. (US Patent 6,616,997).

Sayre teaches a cylindrical cork surface with decorations, designs, logos, etc. on the surface (Column 4, Lines 1-4 and Column 5, Lines 61-64), however he does not explicitly disclose printing with a polychromatic image on the surface. Lauer et al. teaches a closure with cork appearance that is produced with desired colors by using conventional printing techniques that are well known in the art (Column 7, Lines 30-44). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention as taught by Sayre to include a printed design with many colors as taught by Lauer et al., since Lauer et al. teaches that is advantageous to print a colorful design to provide a visual appealing appearance of the cork. Applicant should note that claim 10 is a product by process claim that is defined by the claimed structure of the product.

Allowable Subject Matter

2. Claims 2-8 are allowed.

Response to Arguments

3. Applicant's arguments filed 12/5/05 have been fully considered but they are not persuasive. Applicant's remarks in reference to the Sayre reference are moot since the examiner does not rely on the reference for printing on a cork surface or a colored image.

In response to applicant's comments "The Lauer reference does not overcome deficiencies. At best, it discloses printing indicia on a non-cork surface", the examiner notes that in Column 7, lines 39-40, the reference states producing colors and/or stripes. In a basic sense one of ordinary skill in the art would recognize that the plural form of color/stripe would define using several different colors or several different colors of stripes for aesthetically pleasing reasons. Additionally, with regards to applicants comments on page 9, "The statement would also.....exhibited by the synthetic plastic material which is not exhibited by cork", the examiner notes that on the website www.dictionary.com, the definition of cork can be referred to as a plastic as follows:

cork  **Pronunciation Key** (kôrk)
n.

1. The lightweight elastic outer bark of the cork oak, used especially for bottle closures, insulation, floats, and crafts.
2.
 - a. Something made of cork, especially a bottle stopper.
 - b. A bottle stopper made of other material, such as plastic.
3. A small float used on a fishing line or net to buoy up the line or net or to indicate when a fish bites.
4. Botany. A nonliving, water-resistant protective tissue that is formed on the outside of the cork cambium in the woody stems and roots of many seed plants. Also called **phellem**.

Also, the claims do not explicitly disclose what material the cork is made of, whether it be natural cork material or plastic material.

4. Inventors affidavit arguments filed 12/5/05 have been fully considered but they are not persuasive. Specifically, regarding the industrial method as indicated on several of the pages in the affidavit, the examiner agrees with the inventors, thus the claims have been allowed.

In response to the arguments regarding Sayre, on page 1 paragraph 3, the examiner notes the reference was not relied upon for the transparent capsule, however the prior art was applied for its teachings of an imprinted design on a cork surface located within the top surface of the bottle. Regarding the comments on page 1, paragraph 4 and page 2, paragraph 1, the Lauer reference teaches a synthetic material with physical properties substantially equal to cork as indicated in the abstract. Also, as indicated above, a definition of cork can be a bottle stopper made of plastic and the claim does not explicitly claim a natural cork. Again, as emphasized the examiner agrees with the inventors regarding the industrial method, how the cork is produced by this method and the advantages/disadvantages of the method. The method claims have been allowed, however claims 10 and 11 only refer to the product and not the method in which the polychromatic colors are applied or produced.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 2854

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marissa L. Ferguson-Samreth whose telephone number is (571) 272-2163. The examiner can normally be reached on (M-T) 6:30am-4:00pm and every other (F) 7:30am-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Hirshfeld can be reached on (571) 272-2168. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Marissa L Ferguson-Samreth
Examiner
Art Unit 2854

MFS
February 16, 2006



ANDREW H. HIRSHFELD
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800